FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CHRYSTINE M. LAWSON, an individual; CAMPUS LABOR ACTION COALITION, an unincorporated association, *Plaintiffs-Appellants,* v. CITY OF SANTA BARBARA, a municipal corporation; MIKE CARPENTER; RICHARD C. JOHNS, in their official capacity, *Defendants-Appellees.*	No. 01-56150 D.C. No. CV-01-02692-MLR OPINION

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Argued and Submitted
February 13, 2002—San Francisco, California

Filed November 13, 2002

Before: J. Clifford Wallace, Alex Kozinski and
Richard A. Paez, Circuit Judges.

Per Curiam Opinion

COUNSEL

Gilbert Gaynor, Santa Barbara, California, argued the cause for the appellants. Daniel P. Tokaji and Mark D. Rosenbaum, ACLU Foundation of Southern California, Los Angeles, California, assisted on the brief.

Janet K. McGinnis, Assistant City Attorney, Santa Barbara, California, argued the cause for the appellees. Daniel J. Wallace, City Attorney, assisted on the brief.

OPINION

PER CURIAM:

The Campus Labor Action Coalition ("CLAC"), a political action group in Santa Barbara, California, decided to organize

the March for Economic Justice to call attention to the plight of the city's poor. CLAC planned to hold the event on Saturday, May 12, 2001. Participants would assemble in a park, march through the city and hold a rally in the gardens in front of the county courthouse.

Chrystine Lawson, a CLAC member, was in charge of obtaining all required permits. In February and March 2001, she spoke several times with members of the Santa Barbara Parks and Recreation Department and the Police Department, asking for copies of all regulations and permit applications relevant to CLAC's planned event. The police told Lawson that CLAC would have to cover required police costs and obtain liability insurance.

On March 12, 2001, Lawson submitted applications for three permits: (1) a permit from the city to assemble in the park ("park permit"); (2) another city permit to conduct the parade ("parade permit"); and (3) a county permit to rally at the courthouse. Only the city permits are at issue here.[1]

On March 19, 2001, the police told Lawson that the parade could not march as planned on Haley Street because it was the city's major east-west artery. Lawson and CLAC then filed this suit under 42 U.S.C. § 1983 for violation of their rights to free speech and free association. They argued that the permit scheme is unconstitutional both facially and as applied, and sought declaratory relief and an injunction preventing its enforcement with respect to the 2001 parade.

After receiving the complaint, the city dropped all but one of its conditions: Officials said that CLAC did not require a park permit after all, and dropped the police and insurance conditions on the parade permit, but still insisted that the parade could not use Haley Street. The event took place as

[1]The county granted the courthouse permit on March 22, 2001.

scheduled on May 12, 2001, using Cota Street, which is parallel to Haley but one block north of it.

The city then moved to dismiss on a variety of grounds, including mootness. Without specifying the basis for its ruling, the district court granted the motion to dismiss and denied Lawson's motion for preliminary injunction. Lawson appeals.

[1] When, due to intervening developments, a case is no longer a "present, live controversy," *San Lazaro Ass'n* v. *Connell*, 286 F.3d 1088, 1095 (9th Cir. 2002) (internal quotation marks omitted), the action is moot and must be dismissed for lack of subject matter jurisdiction. *Bernhardt* v. *County of Los Angeles*, 279 F.3d 862, 871 (9th Cir. 2002); *Blair* v. *Shanahan*, 38 F.3d 1514, 1518 (9th Cir. 1994). As of the district court's dismissal, CLAC had already staged a successful March for Economic Justice, so there was no live controversy regarding the permits for the May 12, 2001, event. Nonetheless, Lawson argues that her case is not moot because "the underlying dispute . . . is one capable of repetition, yet evading review." *Unabom Trial Media Coalition* v. *U.S. Dist. Court*, 183 F.3d 949, 950 (9th Cir. 1999) (internal quotation marks omitted).

[2] "[T]he capable-of-repetition doctrine applies only in exceptional situations" where (1) "there is a reasonable expectation that the same complaining party will be subject to the same action again," and (2) the challenged action is too short in duration "to be fully litigated prior to cessation or expiration." *Spencer* v. *Kemna*, 523 U.S. 1, 17 (1998) (internal quotation marks and brackets omitted); *see also Unabom Trial Media Coalition*, 183 F.3d at 950. Lawson satisfies the first prong: CLAC represents that it intends the March for Economic Justice to be an annual event; therefore, CLAC will have to apply for event permits every year.

[3] Lawson also argues that the litigation process is too slow to resolve her challenge before the scheduled date of

future parades. However, time will run short for Lawson only if she chooses to delay filing permit applications for the event. Unlike *Roe* v. *Wade*, 410 U.S. 113, 125 (1973), this case does not present a situation where the time before the controversy becomes moot "is always so short as to evade review." *Spencer*, 523 U.S. at 18. Rather, the amount of time available to challenge a denied permit will vary, depending on when Lawson applies for it.

[4] Under the governing ordinance and regulation, Lawson is entitled to apply for the required permits up to a year in advance of a planned march. Santa Barbara Municipal Code § 9.12.040(A); City of Santa Barbara Parks & Recreation Dep't, *Special Event Guide & Application* 1. Nothing prevents Lawson from applying for the permits as early as the May preceding a future parade. Regulations require the city to make a final decision on permit applications within eighteen days.[2] Therefore, if Lawson files permit applications as early as possible for a future march, and the permits are denied, she could file suit in state or federal court almost a year before the scheduled parade date. This would leave more than enough time to litigate the case through the state courts, given that California law provides for accelerated review of the city's decision. Cal. Civ. Proc. Code § 1094.8(d)(5) (providing that in an action challenging the denial of a permit for expressive conduct, "the court shall render its decision [no later than] 50 calendar days after the date the petition is filed").[3]

[2]The city must "approve, conditionally approve, or deny [a parade permit] application . . . no later than fifteen (15) days after [receiving] a completed application." Santa Barbara Municipal Code § 9.12.060. If necessary, an applicant may appeal and receive a decision within three days. *Id.* § 9.12.100.

City officials must respond to a park permit application "approximately two weeks after [it is] received." *Special Event Guide & Application* 1. No provisions exist for an administrative appeal from the denial of a park permit.

[3]The Supreme Court has held that 18 months is "too short a period of time for appellants to obtain complete judicial review." *First Nat'l Bank*

And, it would also leave plenty of time to seek review in federal court, where she could request an expedited appeal from an adverse decision below.[4] *See* 9th Cir. R. 27-12. A party may not create the exigency necessary to evade mootness by bypassing reasonably available avenues of speedy review.[5]

Nor can Lawson show that her challenge meets the "reasonably evades review" prong because the city's permitting scheme hampers CLAC's ability to stage spontaneous protests on short notice. Some plaintiffs, like those in *NAACP, W. Region* v. *City of Richmond*, 743 F.2d 1346, 1352-53 (9th Cir. 1984), engage in expressive activity in reaction to current events, and must speak on the heels of those events if their speech is to be effective and relevant. In such cases, "[t]he alleged injury is fleeting because the capacity of a topical parade to communicate may be diminished the longer it is delayed . . . . [T]he injury endures only until topical speech

of Boston v. *Bellotti*, 435 U.S. 765, 774 (1978). In *Bellotti*, however, there was no provision for expedited judicial review, so "there [was] every reason to believe that any future suit would take at least as long [as 18 months]." *Id.*; *see also Roe* v. *Wade*, 410 U.S. at 125 (holding that, where expedited judicial review was unavailable, "the normal 266-day human gestation period is so short that the pregnancy will come to term before the *usual* appellate process is complete" (emphasis added)).

[4]It's possible that Lawson's challenges will become moot after a decision at the circuit level but before Supreme Court review is complete. This possibility does not change our analysis: If Lawson applies for parade permits in a timely manner, her appeal would not evade *our* review. If a case becomes moot during the certiorari process, the Supreme Court could find that the case, at that time, fits within the mootness exception. But we would have been able to address Lawson's challenge had she acted quickly; therefore, at least at the circuit level—which necessarily is our focus—her case will not evade review.

[5]Lawson also argues that her claim falls under the voluntary cessation exception. However, we do not find the case moot because the city voluntarily removed the allegedly unconstitutional conditions but because the group already held its parade. The voluntary cessation doctrine is an affirmative defense to an *independent* basis for finding the case moot. It cannot revive an otherwise moot claim. *See DeFunis* v. *Odegaard*, 416 U.S. 312, 318 (1974) (per curiam).

is no longer topical." *Id.* at 1353. Because "plenary review of [such challenges] is simply not possible within so brief a period," *id.*, we held that the NAACP's case evaded review and therefore satisfied the exception to the mootness requirement.

But CLAC's parades are not spontaneous, and nothing in the record suggests that CLAC intends to stage a reactive event in the future. CLAC sets the date of its annual march far in advance, which gives the organization plenty of time to exhaust the appeals process and file suit, should the city deny the requested permits.[6]

[5] Finally, Lawson's complaint only asked for relief with respect to CLAC's 2001 parade. *See* E.R. at 2 ("Specifically, plaintiffs plan to hold a public assembly and pedestrian parade within the City of Santa Barbara on May 12, 2001. They are prevented from engaging in such peaceful and protected activity by the threat of enforcement of [the city's permit scheme]."). Lawson, however, did offer various statements in the complaint and in affidavits obliquely suggesting that she intended to seek relief not just for the completed 2001 parade, but for future parades as well. Because Lawson may still present a live controversy as to these future parades, we remand to the district court with instructions that it grant Lawson leave to amend (if she so desires) to clarify

[6]It's well established that Lawson need not apply for a permit before raising a facial challenge to the permit scheme. *See Lakewood* v. *Plain Dealer Publ'g Co.*, 486 U.S. 750, 755-56 (1988). Our discussion focuses on her as-applied claim because her facial challenge does not present the same type of concern for evading review: Facial challenges are not restricted by time limits inherent in a permit scheme (e.g., rules that allow applications at most one year in advance), and thus can generally be raised far enough in advance to obtain full appellate review. Of course, just as with permit applications, a group may find that its facial challenge has become moot if it waits too long before bringing its claim. This is what happened here because Lawson only sought relief as to the 2001 parade. *See* pp. 7 *infra*.

whether she in fact seeks such future relief. *See* Fed. R. Civ. P. 15.[7]

AFFIRMED in part, REVERSED in part and REMANDED. No costs.

[7]Of course, Lawson (like all litigants) must still show that her claim with respect to future parades is ripe for adjudication. *See, e.g.*, *Thomas* v. *Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138-42 (9th Cir. 2000) (en banc).